DOCKET FILE COPY ORIGINAL

Law Offices
KELLER AND HECKMAN
1001 G Street, N.W.
Suite 500 West
Washington, D.C. 20001
Telephone (202) 434-4100
Telex 49 95551 "KELMAN"
Telecopier (202) 434-4646

Boulevard Louis Schmidt 87
B-1040 Brussels
Telephone 32(2) 732 52 80
Telecopier 32(2) 732 53 92

March 30, 1993

WRITER'S DIRECT DIAL NUMBER
(202) 434-4144

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: Mobile Marine Radio, Inc. Comments,
CC Docket No. 93-36

Dear Ms. Searcy:

Enclosed, please find a corrected set of comments filed yesterday in the above-referenced docket. The cover page and page 1 as filed were inadvertently printed on incorrect letterhead. No other change is made to the comments as filed. Please substitute the enclosed submission for the originally-filed document.

Very truly yours,

Martin W. Bercovici

Enclosure

CORRECTED

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of	)	
	)	**CC Docket No. 93-36**
Tariff Filing Requirements for	)	
Non-Dominant Common Carriers	)	

COMMENTS OF MOBILE MARINE RADIO, INC.

Martin W. Bercovici
KELLER AND HECKMAN
1001 G Street, N.W.
Suite 500 West
Washington, D.C. 20001
(202-434-4144)

Attorney for
MOBILE MARINE RADIO, INC.

March 29, 1993

CORRECTED

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of	)	
	)	CC Docket No. 93-36
Tariff Filing Requirements for Non-Dominant Common Carriers	)	

COMMENTS OF MOBILE MARINE RADIO, INC.

[redacted]

II. COMMENTS

A. Requirements for International Telecommunications Service

Accounting for international maritime telecommunications service is governed by the CCITT Regulations. CCITT establishes a specific scheme which governs charging for maritime service, as follows:

> The charges for radiocommunications consist of:
>
> (a) the landline charges;
>
> (b) the land station charges;
>
> (c) any charges for special services for telegrams that have to be considered in the accounting; and
>
> (d) any special charges for special facilities.

CCITT Regulations at K1-K5. Furthermore, the landline charge identified in "(a)" above must be "notified either in special drawing rights (SDRs) or in gold francs to the ITU General Secretariat by the land station Administration," id. at K6; and "The landline and land station charges notified to the ITU General Secretariat in accordance with K6 to K8 will be published in the List of Coast Stations." Id. at K9. Finally, as pertinent to this rulemaking, the CCITT Regulations provide that new or modified charges shall not be applicable to traffic (other than for countries which establish the new or modified charges) until a period of one month and 15 days following the publication date of the ITU Operational Bulletin which contains the notification of the new or modified charge. Id. at K12-K14.

2/(...continued)
12, except as the latter may relate to tying arrangements between MTS and/or telex landline service and maritime service rendered by the same carrier or carriers under common control, as discussed in II.C., infra.

The United States being a party to the CCITT Regulations, maritime carriers are subject to those regulations. See, 47 C.F.R. § 80.86. Accordingly, the Commission must regulate tariff practices of carriers consistent with the CCITT provisions governing the charging for international telecommunications services.

Sections 201 and 222 of the Communications Act of 1934, as amended, require the interconnection of carriers for the joint provision of through service and the establishment of charges, practices, classifications and regulations for such service which are just and reasonable. Thus, the CCITT Regulations have application not only to entities such as MMR which furnish the "land station" service referenced in the CCITT regulations, but also to carriers providing the essential landline links connecting between maritime carriers on the one hand with both domestic subscribers for the origination and termination of international maritime traffic, and also foreign originated traffic destined for vessels at sea. Accordingly, it is in this context that the Commission must consider the instant proposal and its effect upon maritime common carriers and their compliance with the CCITT Regulations.

B. One Day Notice

The Commission proposes to allow non-dominant carriers to file tariff changes on a minimum of one-day notice. This would be a reduction from the current 14-day notice. MMR has no objection to the filing of *reduced* tariff charges on one-day notice; however reduction of the notice period for tariff

increases from 14 days to one day exacerbates an already serious problem affecting MMR.

The Commission's regulations governing the filing of tariffs

objection to a 1-day notice period for rate decreases, as adopted by the Interstate Commerce Commission in the precedent cited as supporting this proposal. Moreover, the 1-day notice period for rate decreases is consistent with the Commission's objective of promoting competition. While carriers should not unduly be constrained with regard to necessary rate increases, carriers do not compete on the basis of rate increases; and a 1-day notice period frustrates the underlying concept of notification to the public reflected in § 203(b) of the Communications Act.[3/]

C. Maximum and Range of Tariff Rates

Twice the Commission has attempted to relieve carriers of their statutory obligations under § 203 of the Communications Act, and twice the U.S. Court of Appeals for the District of Columbia Circuit has found that the Commission had failed to enforce the statutory mandate. See, MCI v. FCC, 765 F.2d 1186 (D.C. Cir. 1985); AT&T v. FCC, 978 F.2d 727 (D.C. Cir. 1992); rehearing en banc denied, Jan. 21, 1993. Having failed by regulation to prohibit carriers from complying with the statutory mandate to file tariffs and then having failed in its effort to waive the statutory mandate for tariff filing by those who elected to take advantage of said waiver, the Commission now

---

3/ In the rulemaking on review in Southern Motor Carriers Rate Conference, supra, the ICC gave recognition to the "notice" aspect regarding rate increases, and accordingly maintained a longer notice period for rate increases than contemplated in the NPRM. MMR cites to the ICC's action solely for the policy consideration; with regard to the specific number of days of notice required, MMR calls to the Commission's attention the facts that neither do motor carriers operate in the same type of connecting carrier environment as do telecommunications carriers nor are they subject to CCITT notification requirements.

proposes to vitiate the tariff concept by gutting the requirement that carriers shall "print and keep open for public inspection schedules showing all charges ...," 47 U.S.C. § 203(a).

A "charge," as pertinent to its use in the Communications Act, is defined as "the price demanded for something."[4/] Publication of a maximum charge or a range of rates neither meets this definitional concept nor comports with the structure of common carrier service under Title II of the Act. To allow publication of charges in non-specific amounts, whether by range or by maximum, defeats the tariffing concept of notice, opportunity for review, and the non-discrimination injunction of the Act. Accord, Regular Common Carrier Conference v. United States, 793 F.2d 376 (D.C. Cir. 1986). In this latter regard, while relaxing tariff regulation of carriers deemed to be non-dominant, the Commission maintained the applicability of the non-discrimination provision of the Act. Competitive Common Carrier, 91 F.C.C.2d 59, 70-71 (1982). Allowing tariffs to be published with non-binding statements of rates would frustrate whatever residual regulatory authority the Commission sought to preserve to enforce Section 202 of the Act.

The Commission cites to precedent under the Interstate Commerce Act in support of its reduced notice proposal, and the courts have cited to the interpretation of Interstate Commerce Act as instinctive in interpreting the common carrier provisions of the Communications Act. See, AT&T v. FCC, supra, at 736, n.12. The Commission in this aspect of the NPRM as well should

---

4/ Webster's Ninth New Collegiate Dictionary, Merriam-Webster, Inc. (Springfield, MA), 1986.

look to the treatment of range of rate tariffs by the Interstate Commerce Commission, for that agency also has endeavored to promote carrier competition through relaxation of tariffing requirements.[5/] While the Interstate Commerce Commission has ruled in individual cases that range of rate tariffs did not satisfy the disclosure requirements of the Interstate Commerce Act,[6/] the ICC declined to declare range of rate tariffs per se

---

5/ The ICC's lack of enforcement of tariff regulation and

unlawful.[7] The Commission, under Congressional direction, now is reconsidering its prior declination to adopt a per se ruling on the unlawfulness of range of rate tariffs.[8] The condemnation of this practice was expressed by the Senate Committee on Appropriations in no uncertain terms:

> The Committee remains concerned about the ICC's failure to adequately enforce motor carrier tariff filing standards required by law. ... Despite the ICC's case-by-case approach to addressing the lawfulness of tariff forms, the number of unlawful filings remains substantial.
>
> In order to ensure the rate disclosure required by law, the Committee instructs the ICC to initiate, as soon as possible, an industrywide proceeding to eliminate motor tariff filings that fail to explicitly state actual rates applied by carriers or that use so-called range or right in provisions ... The Committee expects the ICC to complete this proceeding within 180 days and to report its progress in doing so to the Committee.

S. Rpt. 102-351 at 187-188 (July 30, 1992).

MMR's concern with non-specific tariff rates arises separately from its CCITT notification responsibilities and by virtue that competing carriers render not only maritime service but also connecting landline service.[9] MMR is subject to what it believes is not only unfair but also unlawful competition wherein MCI extends volume-related non-tariffed

---

7/ Petition for Declaratory Order -- Discounts and Customer Account Codes, 8 I.C.C.2d 47 (1991).

8/ Docket No. 40887, Range Tariffs of All Motor Common Carriers -- Show Cause Proceeding, 58 Fed. Reg. 3559 (Jan. 11, 1993).

9/ MCI renders both maritime telegraphy as well as landline telegraphy and telephony services; and AT&T renders maritime telephony service, and also holds authority for maritime telegraphy service, as well as rendering landline network services. While AT&T is regulated as dominant, the regulatory treatment of AT&T currently is under re-evaluation by the Commission. Competition in the Interstate Interexchange Marketplace, 5 FCC Rcd. 2627 (1990).

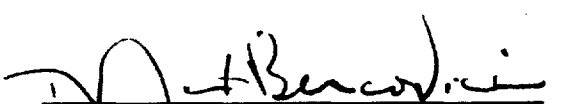
discounts to customers, which discounts may be earned by landline network usage but applied to both landline and maritime charges. Thus, MCI is able to leverage its landline network to MMR's severe competitive disadvantage. MMR, not being the operator of a landline network, but reliant upon those operated by MCI and other carriers, cannot offer customers the same rate advantages that MCI does through its tying arrangements.[10/] The Court of Appeals' decision in AT&T v. FCC, supra, hopefully will terminate MCI's off-tariff discounting practices. To allow an entity such as MCI to tariff in non-specific rate form would allow it to continue tying arrangements between services through the manipulation of the rates charged.

The Commission has taken notice of the anticompetitive effect of allowing carriers to tie services together in its pending maritime rulemaking proceeding, PR Docket No. 92-257.[11/] Therein, the Commission proposes to subject maritime carriers to the streamlined regulatory scheme for non-dominant carriers; however, it raises the issue of whether dominant status should be retained for those carriers which operate both coast station and landline services, or, alternatively, whether such dual authority

to-point capabilities on a separated basis to prevent cross-subsidization and unlawful tying.[12/] The result MMR requests herein is fully consistent with the Commission's policies and recent actions regarding the regulatory status of carriers affiliated with foreign carriers which control bottleneck services and facilities in their jurisdictions. The Commission treats said carriers as dominant for all purposes, in order to be able to maintain effective regulation over said carriers' ability to manipulate markets through their tying arrangements.[13/]

WHEREFORE, THE PREMISES CONSIDERED, Mobile Marine Radio, Inc., respectfully urges the Federal Communications Commission (i) to retain current notice provisions regarding common carrier rate *increases,* and (ii) to forgo its proposal for non-specific rates with regard to basic services and with regard to any services entailing the tying together of maritime and landline telecommunications service.

Respectfully submitted,



Martin W. Bercovici
KELLER AND HECKMAN
1001 G Street, N.W.
Suite 500 West
Washington, D.C. 20001
(202-434-4144)

Attorney for
MOBILE MARINE RADIO, INC.

March 29, 1993

12/ Notice at para. 36.

13/ International Common Carrier Services, 7 FCC Rcd. 7331 (1992).